(2)

Supreme Court, U.S.
FILED
MAR 25 2010
OFFICE OF THE CLERK

Docket No. 09-892

In The

SUPREME COURT OF THE UNITED STATES

Paul J. Southwick

Petitioner

v.

Marguerite A. Crownover et. al.

Respondents

On Petition for Writ of Certiorari

To The First District Court of Appeal,

Division Three, State of California

SUPPLEMENTAL BRIEF

ON PETITION FOR A WRIT OF CERTIORARI

TO THE U.S. SUPREME COURT

Paul J. Southwick,

Pro Se

925 Lakeville St. #186

Petaluma, Ca. 94952

707-364-1340

Filed 1-12-2010

Docketed 1-27-2010

Set for Conference 3-26-10

Comes now, Paul J. Southwick, Petitioner, pursuant to Rule 15.8, & 29, requesting this court GRANT the *Writ of Certiorari* for the reasons set forth in this SUPPLEMENTAL BRIEF together with his ORIGINAL **Writ of Certiorari,** for the reasons stated herein and for those reasons stated in the writ.

LIST OF PARTIES

Sonoma County Department of Child Support Services (DCSS) As Interlopers, (et al.)

TABLE OF CONTENTS

Pg.

ISSUES INVOLVED: 6

INTRODUCTION:.....7

Brief History of the Original Motion to Set Aside.....15

Extrinsic Fraud Upon the Court is a Basis to Set Aside or Reverse an Order or Judgment.....23

Additional Issues Involved.....30

No Member of the Executive, Judicial or Legislative Branch of Government May War With the Constitution.....31

***Mullane v. Central Hanover Bank and Trust Co.*, 339, U.S. 306**.....26

SUMMARY:.....33

CONCLUSION:.....34

TABLE OF AUTHORITIES

California Penal Code 32.....11

Title 5, U.S. Code Section 556(d) Sec.706...

TABLE OF CASES

California Cases Cited;

Daut v. Daut, 98 Cal App. 2d 375 (1950)...22

Marriage of Grissom, 30 Cal. App. 4th 40, Cal Rptr 2d. 530 (1994).....31

Mary R. v. B. & R. Corp. 149, Cal App 3d 308.....25

Saunders v. Saunders, 157 Cal App. 2d 67, 320 P 2d 131 (2d Dist.1958).....20

Sheldon v. Gunn, 56 Cal. 582,(1880).....30

Stenderup v. Broadway State Bank of Los Angeles, 219 Cal. 593, 28 P.2d 14 (1933)...15

Sheldon v. Gunn, 56 Cal. 582, (1880).....30

Federal Cases Cited:

Bodie v. Connecticut, 401 U.S. 371, 401 U.S. 378.....26

Bulloch v. United States, 763 F. 2d 1115, 1121 (10th Cir 1985).....11

Cooper v. Aaron, 358, U.S.1.....31

Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944).....24

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).....26

Liljeberg v. Health Services Acquisition Corp. 486 U.S. 847, 108 S. Ct. 2194 (1988).....11

Liteky v. U.S. 114 S. Ct. 1147, 1162 (1994)..11

Mullane v. Central Hanover Bank and Trust Co., 339, U.S. 306.....26

Navaro-Lopez v. Alberto R. Gonzales, Attorney General, 455 F.3d 1055 14

Sterling v.Constantin, 287, U.S.378(1932)..30

ISSUES INVOLVED

Denial of a right to be heard, denial of due process, denial of equal protection, denial of the right to enter evidence, denial of a meaningful appeal, denial of the right of discovery in a post judgment motion to set aside; procured by extrinsic fraud upon the court, denial of the right of remedy by a

denial of remand, and denial of due process on review in the California Supreme Court.

Conspiracy to commit **Extrinsic Fraud Upon the Court**; multiple occurrences.

INTRODUCTION

On January 27, 2010 the clerk of this court docketed this case coming out of the State of California where that Supreme Court refused to grant review of an appeal where due process was denied, *as acknowledged by the Cal/App. 1/3 in the opinion,* and refused to remand the case back to the lower court for a remedy pursuant to

the due process violation by treating it as a preemptory writ as Southwick had requested and argued. *(Family Law Commissioner Louise Bayles~ Fightmaster in Sonoma County; Case Number 957331.)*

The Appellate Case Number was: A-121579. The Supreme Court Case Number was: S-176164.

Since the filing of this writ, and after additional case research, together with much consideration and thought, petitioner has determined it best to supply this court with some additional facts and additional case citations relating to the case.

Especially, in light of the fact Respondent, Marguerite A. Crownover, (Crownover) has neither filed a response, or waiver of her right to respond.

The County of Sonoma et al, (DCSS) has filed a waiver on 2-9-2010, By California D.O.J. Attorney Brenda A. Ray, Bar # 164564.

Crownover did NOT file any response brief or documents in the state appeal whatsoever. Nor, did she or the county DCSS file counter "extensive briefs" in the original application to set aside pursuant to Family Code 3691, as the opinion in A-121579.

claims, *(pg. 9 second paragraph, dated: July 30, 2009.)*

The County of Sonoma failed to file their response brief timely, (S. Quinn D.A.G.).

Which was originally due on December 9, 2008, after a stipulated extension of time of 60 days had elapsed entered into by the parties and executed by Marina L. Soto, D.A.G., Quinn's predecessor. Counsel, (Quinn), for Sonoma County applied for an additional extension of time AFTER their deadline to file their response brief EXPIRED. (See: Docket in A-121579.) available at:

http://www.appellatecases.courtinfo.ca.gov.

Petitioner, Paul J. Southwick, (Southwick) objected to this as being prejudicial to his cause and in violation of the California Rules of Court, yet he was over-ruled. See: *Liteky v. U.S 114, S. Ct. 1147, 1162 (1994.) & Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S. Ct. 2194 (1988).*

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "Fraud Upon The Court". *In Bulloch v. United States, 763 F. 2d 1115, 1121 (10th Cir 1985),* the court stated: *"Fraud Upon the Court is fraud which is directed to the judicial machinery itself and*

is not fraud between parties or fraudulent documents, false statements or perjury. ...It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his/her judicial function—thus where the impartial functions of the court have been directly corrupted."

The entire appeal was conducted under the assumption that the County of Sonoma Department of Child Support Services (DCSS) had properly filed a petition for intervention in 2003. However, it has now come to the attention of Southwick that no such petition exists, nor does any evidence

exist that any hearing ever occurred in regard to a motion in intervention or joinder in SFL 957331, (Sonoma Co.)

Nor, does any such ORDER signed by <u>any</u> judge in any county exist in the record, or in the record on appeal as evidenced by the Clerk's Transcript on the entry ledger sheet.

Sonoma County DCSS, (DCSS) appears to be an INTERLOPING party in intervention without lawful standing to represent Crownover and an inquiry should be made into this discovery by requesting Sonoma County DCSS file a response.

This appears to be an ADDITIONAL <u>Fraud Upon the Court.</u> Brenda Ray <u>*should*</u>

not in good moral conscience and under her oath of office, obfuscate the deeds of her D.O.J. Sister D.A.G.'s, Sharon Quinn, and Marina L. Soto by simply filing a waiver.

See the case of *Navaro-Lopez v. Alberto R. Gonzales, Attorney General, 455 F.3d 1055* page #2 citing; mis-prison of felony and violations of Cal Penal Code 32 as Southwick alleges against Quinn in his Writ of Certiorari.

The Doctrine of inevitable discovery will *more than likely* burst upon the stage of truth at some point in this case, and when it is least expected.

Brief History of the Motion to Set Aside

When Southwick filed his Application to set aside what he was led to believe was a support order, by the DCSS, as required by Mandatory Rule on California Judicial Counsel Form 670, he stated and declared under perjury that he believed Crownover together with her second Attorney, Leonard R. Milstein, (now disbarred), had contemptuously committed a conspiratorial Fraud Upon the Court, (*St. John, Court 1990, in Santa Maria, Ca.).*

Southwick also stated that he had reason to believe that her third attorney, James F. Rigali Esq., had assisted her in a cover up of

those allegations made by Milstein and Crownover assisted by Kathleen Baggerly, a so-called "Mandated Reporter" classified under California Penal Code, who appeared in the St. John Court prepared to take the witness stand on March 19,1990, relating to a police report filed by Crownover which was later denied by Crownover under oath 2.5 years later in the Lewellen Court, in April of 1992.

Crownover denied all of this under a declatory perjury statement filed in the Fightmaster Court in March of 2008, and again resorted to her ruse of false allegations

of a sexual nature with the assistance of Attorney Fran Bussone from the DCSS.

Crownover used her allegations for 2.5 years against Southwick regarding accusations of a sexual nature where the minor children were used as innocent pawns in gaining a custody award. Naturally, to her benefit where large sums of money would be ordered paid to her as a result of that custody award. Then denied them under oath.

These allegations were persistently made for this period and committed upon Judge Richard St. John on multiple occasions in year 1990 with the assistance of her counsel

Leonard R. Milstein. The court made relative orders restricting Southwick regarding these allegations at that time. These Court ordered restrictions where later lifted by Judge St. John after a criminal probe was conducted. Southwick was represented by James F. Iwasco, Esq, Now a sitting judge in Santa Maria, California.

In his application of 2008, Southwick had always stated that he had information that Crownover had committed a Fraud Upon the Court by concealing certain facts to both Judge Lewellen and Judge St. John using two attorneys in addition to filing contrary

affidavits while committing felony perjury upon the witness stand.

However, Sharon Quinn, Deputy Attorney General for the State of California, had stated otherwise in her response brief and resorted to *ad hominum* character attacks directed at Southwick which went on for numerous pages. The multiple allegations of a sexual nature are undisputed.

Quinn has NEVER appeared in the case, other than once by telephone at oral argument on 7/22/2009. She never looked in the six volumes in the lower case either, she states so in her response brief.

Those deeds and actions happened nearly 17 years prior and in a county far from Quinn. Proof of these facts are demonstrated by the last minute discovery of that certified transcript of December 10, 1990, brought to court on April 30, 2008 and clearly establishes that Crownover's contrary perjury under oath, concealed fabricated assertions, and fabricated evidence presented to Judge St John all through 1990, and again, denying it when on the witness stand in April of 1992, before Judge Lewellen.

Extrinsic Fraud Upon The Court was committed by Crownover, Rigali, Milstein

and Kathleen Baggerly. See: Stenderup v. *Broadway State Bank of Los Angeles, 219 Cal. 593, 28 P.2d 14 (1933) [involving the introduction of false evidence and withholding of other evidence for the purpose of deceiving the opposing party and the court.] See also: Saunders v. Saunders, 157 Cal App. 2d 67, 320 P 2d 131 (2d Dist. 1958)*

In the forbidden transcript of December 10, 1990, (stricken from the appellate record), on page 69, line 6, Judge St. John issues this warning to Crownover and Milstein; *The Court: "If there is a finding that you willfully frustrated visitation and association with the other parent, it is*

strongly possible that you will lose custody on that basis alone."

This same warning appears in the March 19, 1990 Transcript, (in the record on appeal) on page 5 at line 5; The Court: *"But I have read the declarations on both sides I will tell you right now, I want to advise you, Mr. Milstein, if I find that your client intentionally frustrated visitation and made misstatements regarding conduct of her husband, I may seriously restrict her. I may deprive her of custody and restrict visitation."*

Extrinic Fraud Upon the Court is a Basis to Set Aside or Reverse an Order or Judgment.

In: *Daut v. Daut, 98 Cal App. 2d 375 (1950)* the Third Appellate Court sated the following in regard to concealment of facts to the court: *"Had Plaintiff (Mr. Daut) revealed the facts to that court, it would, doubtless have arrived at a different conclusion... Such fraud is EXTRINSIC and justifies a court in setting aside prior decrees in a divorce action."* Further stated in the opinion is this statement: *"And where extrinsic fraud is practiced upon a court there is* ***no statutory***

limitation upon the time *within which application for relief may be had."*

All thorough the appeal and in her response brief, Sharon Quinn, D.A.G. repeatedly claimed the perjury committed by Crownover was only intrinsic, but in light of the above case she is wrong. There are a number of other California cases that support these findings as well. Additionally, in: ***Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944)*** this court found it NOT necessary for a party to *"exercise due diligence to uncover the fraud, relief may not be denied on that ground alone, since public interests are involved."*

Fraud Upon a Court or Extrinsic~Fraud~ Upon~ the~Court is a public interest too, because it is an assault upon the administration of justice as it dismantles the machinery of judicial impartiality. See: *Marriage of Grissom, 30 Cal. App. 4th 40, Cal Rptr 2d. 530 (1994).*

But certainly, a person must be given an opportunity to have a meaningful opportunity to expose fraud by being allowed to put on evidence before the court pursuant to due process, and not to be shunned, denied or cast out of the courtroom as the Fightmaster court did to Southwick.

Fightmaster denied this opportunity guaranteed to by the Fourteenth Amendment to the U.S. Constitution and by doing so, she violated her solemn oath she took on the 26th day of August 2004, Before Cynthia Denaholtz (See Appendix "E" in Petitioner's Writ of Certiorari). See also: *Bodie v. Connecticut, 401 U.S. 371, 401 U.S. 378., and Mullane v. Centaral Hanover Bank and Trust Co., 339, U.S. 306.*

Additionally, See: *Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)* on being allowed an opportunity to argue on the merits of a cause as an additional due process right.

These fraud acts were committed in Santa Maria, California during the years 1990- through mid 1992.

The judgment was rendered in Santa Maria (Santa Barbara Co.) in August of 1992, and the case was transferred to Santa Rosa (Sonoma Co.) in 1995.

According to the Clerk's Transcript, (CT-103), in the record on appeal, A121579, an entry is found dated: 3/10/1999 wherein an order for the destruction of exhibits is made in case number SFL 957331, (Originally, SM 65005.) This case sat in the basement of the Sonoma County Courthouse for over ten long years with no activity until October of 2007.

Again, how is it that Fightmaster could know everything about the case with so much evidence ripped out and destroyed by the prior destruction of exhibits order as the opinion states?

The stipulation to end the support (2006) entered into by Southwick and Crownover in 2003 was placed in Judge Rene Chouteu's workbox signed by him and placed in the file.

That was the only thing that occurred in 2003 relative to case SFL 957331.

Southwick prepared the stipulation, for himself and Crownover. Both parties signed it and it was entered into the record. No other action or activity occurred that year.

In their declarations of March 18, 2008, both Crownover and the DCSS stated that he violated the order and quit paying support in 2006, under penalty of perjury.

After the denial of the right to proffer, and a fair and fundamental right to cross examine over his written objection to the telephone appearance by Crownover, Fightmaster found that NO order for current support existed and NO order for arrears payback existed either. This is stated by Fightmaster in the reporter's transcript of April 30, 2008, in the record on appeal.

Courts lose jurisdiction if they do not follow Due Process of law. *Title 5, U.S. Code*

Section 556 (d) Sec 557, Sec. 706. See also: Sterling v. Constantin, [3.] 287, U.S. 378, (1932).

Additional Issues Involved

There was NO "Public- Interest" factor in the instant case. It was and is a Non-Welfare Support action, in a NON Governmental case, i.e., the divorce, (SFL 957331).

Governmental agencies MUST follow the same rules as private persons if they want to be an "Intervenor."

See: *Sheldon v. Gunn 56 Cal. 582, (1880)*

[Supreme Court of California.]

In 1983, the Fourth Appellate District stated in Re: *Mary R. v. B. & R. Corp., 149, Cal App 3d 308,* That: *"A governmental entity* (like a county DCSS) *has no greater authority to intervene in the litigation of others than has any other private party."*

No Member of the Executive, Judicial or Legislative Branch of Government May War With the Constitution.

In 1958, this court ruled in *Cooper v. Aaron, 358, U.S. 1.* P. 358, U.S. In this case, this

court stated the following: *" The interpretation of the Fourteen amendment enunciated by this court in the **Brown** case is the Supreme Law of the land, and Art VI of the Constitution makes it of binding effect on the States 'any Thing' in the Constitution or laws of any State to the contrary notwithstanding" P. 358 U.S. 18.*

*"No state legislator or executive or **judicial officer** can war against the Constitution without violating his/her solemn oath to support it" P. 358 U.S. 18.*

SUMMARY

The Extrinsic Fraud Upon the Court on the part of Crownover, fraud by Sonoma County DCSS, the California Department of Justice, (DOJ) and the judicial negligence of BOTH the Sonoma Family Court (Fightmaster) and the Appellate Court 1/3 flourishes like wild flowers after a spring rain .

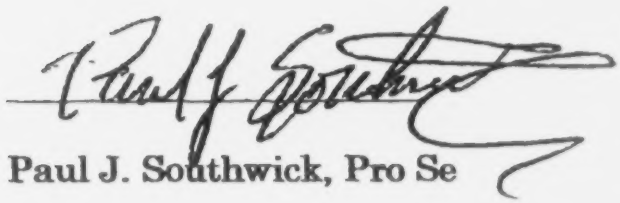
The ENTIRE appeal reeks of injustice as a cover-up for ALL of the due process denials and negligence committed by government actors, attorneys and Crownover. In the interest of justice, this court should INVITE

the Solictor General to ***not only*** brief on the matter, but to conduct an investigation, and to represent Southwick, ***Ex-Relatione.***

CONCLUSION

Southwick has now shown to this court that sufficient proof has been established by this supplemental brief together with his writ of certiorari combined with the failure of Crownover to respond and the opposing party DCSS waiver that this case warrants the GRANTING of cert. Proof exists in the record on appeal and in the lower case in Sonoma County.

Respectfully Submitted, March 22, 2010.



Paul J. Southwick, Pro Se

///